



# AUSTRALASIAN INSTITUTE OF CHARTERED LOSS ADJUSTERS

ABN 18 074 804 167

Dear Member,

I invite your submission for the prestigious **Carey Bird Scholarship** award for 2024.

This annual scholarship was established in 2013 in honour of Carey Bird, an AICLA member who was tragically killed in the Christchurch earthquake on 22 February 2011. Carey was working on business interruption claims for international broker Marsh FACS at the time of the accident.

The following scholarship entry information is provided:

## **ELIGIBILITY & RULES**

- Open to all AICLA members (excluding AICLA Directors and previous winners).
- Written submission to be between 1,000 and 1,500 words. Any submission fewer than 1,000 or more than 2,000 words may be rejected at AICLA's sole discretion.
- You may make reference to legislation in your country.

**TOPIC: *Development Claim: Hit and Miss***

## **THE SCENARIO**

You act for the insurers of a sole trader, bricklaying contractor, Andy Woo ("Andy") under a biz cover type Public Liability policy taken out on-line, on 1 January 2023.

In the on-line questionnaire, a question asking "do you engage in works outside normal bricklaying" for which there was only a tick box, yes or no, was left blank. It appears there was an on-line glitch which should have prevented the form being completed if the box was not ticked.

Andy is subcontracted by a project manager, Jet Black ("Jet") acting as the construction manager for a developer, Manny D'iablo ("Manny"). Manny is developing a small 2 storey office block on a vacant site. At one end of the site, along the boundary, is an existing 120 year old, 2 storey, former brick house. It was converted to office space many years ago and which is currently tenanted by a firm of solicitors and a small start-up, software company.

There is no formal contract between Andy and Manny, only a quote provided by Andy to Jet "for bricklaying services" in the sum of \$100,000.00, and an email from Jet to Andy saying "Got your quote. Great. Manny is keen for you to start, when can you be on site".

Jet had been provided with a set of engineering plans obtained by Manny but there was no geo-technical report (soil investigation report) prepared on the site. The engineer verbally told Jet he

should underpin the next door building on a hit or miss basis but forgot to put this on the plans. (For explanation of hit and miss see [Attachment 1](#))

Jet asked Andy to carry out the underpinning, who agreed to this saying he could use a combination of bricks and concrete, the latter to be mixed in his portable concrete mixer which he used mainly for mixing his mortar. Jet organised for Manny's subcontract excavator to attend and excavate along the boundary for Andy on a hit and miss basis, but Andy required to pay him. The excavator however excavated along the entire boundary, exposing the entire footing of the adjacent building. As a result, the building began to move sustaining substantial damage.

Following the damage Andy claims Jet never told him about the hit and miss requirement but acknowledges he never asked Jet for the plans. The excavator operator claims Andy told him to excavate the entire length in one go, as that would save Andy money.

A dilapidation report compiled prior to the incident shows the building had a large crack in it, both externally and internally on the gable wall, immediately in the area where the failure has occurred.

The third party building owner immediately tried to stabilise the property by means of propping. He submitted a claim to his own building insurers but they are denying his claim on the basis there was an endorsement excluding cover for "subsidence damage arising out of ground movement." Andy's insurers have expressed reservations to you over whether the building insurers could enforce this but have asked you to give your views in your report.

Engineers for the third party building owner consider the current temporary propping is insufficient. The owner is now demanding further significant and urgent stabilisation measures to prevent a total collapse. The owner has also stated he does not have sufficient money to fund this further work. Manny, Jet and the Building owner have all put demands onto Andy. Manny has also put a demand onto Jet who has also put a demand onto the Engineers and the Excavation contractor.

The solicitors and software engineers have both moved out of the building. The solicitors are very aggressive and are demanding Andy's insurers immediately provide new computers, lease costs for new premises and compensation for loss of business. They also want an indemnity for any actions their clients might take against them for their failure to complete contracts and work, on time.

The software engineers are frantic as they claim they were about to launch a new parking app next month. Due to an unrelated problem with their server, in the last week, prior to the accident, they had not been able to back-up to their cloud storage and currently cannot access the building to retrieve their PC's, claiming it is too dangerous. Accordingly all the critical updates to their program for the last week have been effectively lost. They are simply demanding they now be paid \$1m, now.

## **THE TASK**

- a. What immediate enquiries would you make, with whom and what would be the immediate objective of those enquires?
- b. Do you consider there is an issue of non-disclosure relative to Andy's policy? Other than suggesting insurers take legal advice, what enquiries would you undertake and what observations would you make to insurers on this issue.

- c. If insurers were to provide a grant of indemnity what action would you take to mitigate against the potential for a legal brawl to develop?
- d. What are your views on the Building Owners insurers attempt to deny indemnity under their policy?
- e. What other insurance policies might be available to contribute to the loss?
- f. How would you see those policies responding and how would you approach the parties to try and have them submit claims under those policies?
- g. If insurers were to provide you with instructions that they would accept 25% liability but subject to any response you might have, what would be your comments?
- h. Accepting there is some form of liability and Insurers expect you to deal with all the parties and bring the matter to a resolution, what enquires would you make relative to establishing the proper quantum in the loss.

### **SUBMISSION**

The deadline for submission for the 2024 Carey Bird Scholarship is **13 November 2024** (midnight AEST).

Entries to be emailed to: Adrian Libke, Chief Executive AICLA at [adminoffice@aicla.org](mailto:adminoffice@aicla.org)

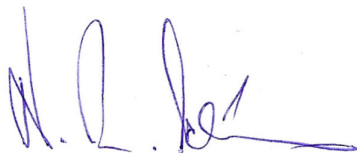
### **PRIZE**

The winner of the scholarship will be entitled to a framed certificate and **one** of the below:

1. Attendance at the Claims Convention (Sydney) plus airfares (economy), accommodation and AUD\$400 to cover out of pocket expenses ; **or**
2. Attendance at the Asian Claims Convention, plus airfares (economy), accommodation and AUD\$400 to cover out of pocket expenses; **or**
3. A cash payment of AUD\$3,000.

I would like to acknowledge Ian McWalter, Consultant, YDR Chartered Loss Adjusters for preparing the Carey Bird Scholarship scenario.

Kind regards,



Nicholas Ackers  
President  
AICLA